Supreme Court, U. S.
FILED
MAY 30 1980
MICHAEL RODAK, JR., CLERK

79-1889

No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term 1980

VICTORIO C. RIVERA,
Appellant,

versus

OREGON STATE EMPLOYEES ASSOCIATION
Morton H. Shapiro, John Irvin, Peter DeLuca,

STATE OF OREGON
Robert Straub, Victor Atiyeh, James A. Redden, William Hoelsher, Harold Williams, Carol Whitney

STATE ACCIDENT INSURANCE FUND,
Charles Gill, Jr., Hank McCauley, Deryl Currie, Jim Randall, Jean Rover, Catherine Sanford, O. K. Nielsen

STATE PERSONNEL DIVISION,
William G. Hughes, Ranney H. Reinen, Betty Spelbrink

STATE EMPLOYMENT DIVISION,
Raymond P. Thorne, C. Woods, R. Ritchie, L. Propeck, Dean Barr, W. H. Brinegar, Colette Buhr, John Loike, Barbara Johnson

EMPLOYMENT RELATIONS BOARD,
Melvin Cleveland, A. H. Blogg, Peter C. Courtney

CIVIL RIGHTS OF BUREAU OF LABOR,
Bill Stevenson, Maria Baragli, Frances Runkel, Reina Smith,
Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JURISDICTIONAL STATEMENT

VICTORIO C. RIVERA, Artist Appellant, deprived of legal representation, is representing himself.

4926 Pullman Ave. S.E.
Salem, Oregon 97302
(503) 581-4649

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No.

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1980

VICTORIO C. RIVERA,
Appellant,

versus

OREGON STATE EMPLOYEES ASSOCIATION,
STATE OF OREGON, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

JURISDICTIONAL STATEMENT

VICTORIO C. RIVERA, plaintiff/appellant and representing himself in this action submits this statement in support of his contention that Court Orders issued by the United States District Court for the District of Oregon in the above-mentioned case should be stricken as sham and false on the grounds that such orders are *unconstitutional.*

This is a civil rights action filed on May 23, 1979 under Title 42 USCS Section 1985* and Section 1986 of the Federal Civil Rights Act because the plaintiff/appellant was discriminated against and was unlawfully and maliciously deprived of his constitutional rights through corruption and willful "conspiracy" by the appellees, Oregon State Employees Association, State of Oregon officials and their

*"The purpose of the statute was to give a cause of action to individuals deprived of their federal rights by conspiracies of either public officials or private persons." *Huey v. Barloga* (1967, DC Ill) 277 F Supp 864.

agents. The appellant is a member of a racial minority.

Furthermore, judges and court officials of this Court have allowed themselves to be corrupted by the appellees, knowingly and willfully "conspired" against the plaintiff/appellant by depriving him of his constitutional rights to equal protection of the laws, due process of the law, legal representation, equal privileges and immunities of the laws; also depriving plaintiff/appellant of a fair trial in the District Court of Oregon, and deliberately obstructing justice.*

OPINION BELOW

I. ORDER, ENTERED IN THIS ACTION ON APRIL 10, 1980. This is a denial of the plaintiff/appellant's motion "Demand for Judgment" filed on March 14, 1980, after all requirements to Title 42 USCS section 1985 of the Federal Civil Rights Act; Rule 8(a)(3), Rule 54(c), and Rule 56(c)(e) of the Federal Rules of Civil Procedure: and Local Rule 11(d)(f)(h) of the United States District Court for the District of Oregon were all satisfied.
The opinion given by the Honorable Judge Owen M. Panner, and quote:

> "IT IS HEREBY ORDERED that plaintiff's motion entitled "Demand for Judgment", filed March 14, 1980, *is denied.*
>
> Dated this 10th day of April, 1980."**

II. ORDERED, ENTERED IN THIS ACTION ON APRIL 9, 1980. This is a denial of the plaintiff/appellant's motion for "Second Summary Judgment" filed on January 30,

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*See Appendix A, B, C, D, E, F, G, H, I, J, K, L
**See Appendix A, 1a

1980 after all requirements to Title 42 USCS section 1985 of the Federal Civil Rights Act; Rule 56(a)(c)(e) of the Federal Rules of Civil Procedure and the Local Rule 11(d)(f)(h) of the United States District Court for the District of Oregon were all satisfied.

The opinion given by the Honorable Judge Panner, and quote:

> "After review of the record and file in the above-entitled matter, *the recommendation of the Magistrate issued the 26th day of February, 1980, is approved.*
>
> IT IS HEREBY ORDERED that plaintiff's motion for 2nd summary judgment against defendants' answer to plaintiff's 1st amended complaint, *is denied.*
>
> Dated this 9th day of April, 1980."

NOTICE IS GIVEN by the Appellant to the opinion of the Court, and quote:

> *"the recommendation of the Magistrate issued the 26th of February, 1980, is approved."**

FURTHER NOTICE is given to the relevancy of the said Order as compared to the letter of the Chief Deputy Clerk Donald M. Cinnamond to the plaintiff/ appellant, contradicting the legality of such recommendation of the Magistrate, issued the 26th of February, 1980, and quote:

> "1. Reference by the state defendants pertaining to two separate Orders denying motions for summary judgment appears to

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*See Appendix B, 2a
**See Appendix E, 6a

> have been in *ERROR*. However, the Order filed by the Honorable Owen M. Panner on April 9, 1980, corrects that."**

The above-mentioned Order, dated February 26, 1980, by the Magistrate Edward Leavy was held back for forty (40) days by the Court before sending a copy to the plaintiff/appellant. The plaintiff/appellant received his copy of the said Order on April 10, 1980.

III. LETTER FROM JUDGE PANNER DATED MAY 2, 1980, AFTER HE RECEIVED "NOTICE OF APPEAL TO THE SUPREME COURT" FROM THE PLAINTIFF/APPELLANT ON APRIL 30, 1980, and quote:

> "I have also received your Notice of Appeal to the Supreme Court of the United States. Your appeal is *not valid*. Therefore, this Court will *retain jurisdiction* over your case."*

Judge Panner may be abusing his authority by refusing to comply with Section 1252 of Title 28 USCS, and quote:

> "Basic general rule is that appeal by parties to United States Supreme Court under 28 USCS Section 1252 *OUSTS* jurisdiction of lower court, and such rule applies in content of District Court's jurisdiction to grant motion to intervene after appeal has been taken; appeal to Supreme Court from District Court is deemed "taken" when notice of appeal is filed with District Court clerk, and at that point, Supreme Court takes jurisdiction

**See Appendix D, 4a

over matter, . . . " *Associated General Contractors. v. Secretary of Commerce of United States Dept. of Commerce,* (1977, DC Cal) FRD 31.

JURISDICTION

This is a direct appeal under Title 28 USCS section 1252 and section 2403 from the unlawful, discriminatory and corrupted Orders issued by judges of the United States District Court for the District of Oregon.

The appellant, VICTORIO C. RIVERA, who is not a lawyer and deprived of legal representation, brought his action in this Court pursuant to Title VII of the Civil Rights Act of 1964 on the advice of the appellees and their agents. Later, appellant discovered that he was given the wrong information by the officials of Equal Employment Opportunity Commission, Civil Rights of the Department of Justice and Civil Rights of the Oregon Bureau of Labor. After knowing that his constitutional right to be free from conspiracies is protected under Title 42 USCS Section 1985, and not Title VII, appellant filed a motion to this effect. Appellant later added Section 1986.

Despite the fact that appellant has repeatedly relied on Section 1985 to support his constitutional rights, still appellees and judges of this Court have deprived him of his right to the United States Constitution by insisting that appellant had filed complaint under Title VII of the Civil Rights Act of 1964.*

There were nine (9) Court Orders, one (1) Finding and recommendation, and three (3) Orders of Civil Minutes issued in this Court from five (5) different judges; *all* of

*See Appendix J, 15a

them appeared to be fabrication of lies and to be fraudulent. The last two (2) Orders were entered in this action April 9, 1980 and April 10, 1980 by the Hon. United States District Judge Owen M. Panner denying the appellant's motions "Demand for Judgement" and "Summary Judgment" after all requirements were all satisfied pursuant to Rule 8(a)(3), Rule 54(c), Rule 55(a)(b), and Rule 56(c)(e) of the Federal Rules of Civil Procedure; and Local Rule 11(d) of the United States District Court for the District of Oregon. The appellant filed in the district court a Notice of Appeal to this Court on April 30, 1980. A copy of the Notice of Appeal is reproduced as Appendix N to this statement.

Jurisdiction of this Court is conferred by Title 28 USCS Section 1252 and Section 2403. Cases believed to sustain jurisdiction are: *International L.G.W. Union v. Donnelly G. CO.*, Mo. 1938, 58 S. Ct. 875, 879, 304 U.S. 243, 249, 82 L. Ed. 1316. 1322. *Fleming v. Rhodes* (1947) 331 US 100, 91 L Ed 1368, 67 S Ct 1140 (statutory predecessor); *United States v. Manufacturers Nat. Bank* (1960) 363 US 194, 4 L Ed 2d 1158, 80 S Ct 1103 (sub silentio); *Clark v. Gabriel* (1968) 393 US 256, 21 L Ed 2d 418, 89 S Ct 424 (sub silentio), reh den 393 US 1112, 21 L Ed 2d 812, 89 S Ct 853; *United States v. Christian Echoes Nat. Ministry, Inc.* (1972) 404 US 561, 30 L Ed 2d 716, 92 S Ct 663; *Richmond Screw Anchor Co. v. United States* (1928) 275 US 331, 72 L Ed 303, 48 S Ct 194 (Taft, Ch.J.).

UNCONSTITUTIONALITY OF THE STATUTES AS APPLIED

I. Title VII of the Civil Rights Act of 1964;

1. Deprivation of the Appellant from recovering damages for injury to his person or property, and the deprivation of his right or privileges as a citizen of the United States, any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42.*
2. Deprivation of the appellant from recovering damages from the appellees and their agents who failed to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which they have knowledge were about to occur and have power to prevent.*
3. The appellant was maliciously misled by legal authorities to file the Civil Rights Complaint against the appellees under Title VII of the Civil Rights Act of 1964 despite the fact that they were made aware of the corrupted conspiracy among the appellees. However, the appellant was able to explain in the body of the complaint that the action was caused by unlawful, discriminatory, corrupt and wilful "conspiracy" among the appellees and their agents to injure appellant. Moreover, in the subsequent motions, section 1985 of Title 42 USCS of the Federal Civil Rights Act was substituted as filed with the court.**

II. Local Rule 3(c) of the United State District Court for the District of Oregon;

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*See Appendix J, 16a
**See Appendix M, 21a

> Quote, "Any attorney who is not an active member of the Oregon State Bar but who is a member in good standing of the bar of any other state may, upon motion, participation in a case in this Court, *provided he associates with him an active member in good standing of the bar of this Court, who will meaningfully participate in the preparation and trial of the case.*"

The appellant of the above-mentioned case challenges the constitutionality of the Act of Congress on Local rule 3(c) of the United States District Court for the District of Oregon as applied in the above-mentioned case on the following grounds:

1. This is a deprivation of the appellant's constitutional right to Amendment XIV Section 1 of the United Constitution, and quote:

   > "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

2. The appellant is an artist by profession and not a lawyer nor has the experience in legal procedures; therefore, he is within his rights to have legal representation and equal protection of the laws from

any of the following legal authorities: Oregon State Employees Association, Legal Aids, State of Oregon Affirmative Action, Attorney General's Office, Civil Rights of the Bureau of Labor, Equal Employment Opportunity Commission, Oregon American Civil Liberties Union, Court- appointed attorney or from private practicing attorneys in Oregon.*

a. It is heartbreaking to discover that human rights do not mean anything in this case. As a result of the conspiracy against the appellant, *not one* of the above-mentioned legal authorities consented to represent the appellant against the currupt establishment despite the fact, that their denial to represent the appellant would mean a violation of the Code of Professional Responsibility.

b. As a result of all these, the appellant who was discriminated against is being deprived of his constitutional rights to legal representation, due process of law, and equal protection of the laws; *even* representation from the out-of-state attorneys that would want to represent the appellant is IMPOSSIBLE because, the said out-of-state attorney could not practice in this court without associating an active member of good standing of the bar of this Court. Among these, more than 50 praticing attorneys have already conspired with the appellees to discriminate against appellant by refusing to represent the appellant in the above-mentioned case. Therefore, Local Rule 3(c) of the U.S. District Court for the

*See Appendix J, L, 15a, 19a

District of Oregon is unconstitutional as applied to the case.

3. The unconstitutionality of Local Rule 3(c) as applied has resulted in the flagrant corruption, discrimination and wilful violation of the constitutional rights of the appellant, Federal Rules and Statutes of the United States by the appellees Oregon State Employees Association, State of Oregon officials and their agents to injure the appellant.*

CONSITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The XIV Amendment to the United States Constitution provides in relevant part:

> "Section 1. . . . No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. 28 USCS 1252 provides in relevant part:

> "Any party may appeal to the Supreme Court from an interlocutory or final judgement, decree or order of any court of the United States . . . , holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee, is a party."

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*See Appendix A, B, C, D, E, F, G, H, I, J, K, L, M

3. 28 USCS 2403 provides:

"In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case; and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality."

4. 42 USCS 1985 provides:

(2) A person who is a party or witness in any court of the United States has a right to be free from a conspiracy to deter, intimidate or threaten him for attending or testifying.

(3) Every citizen involved in litigation the right to be free from a conspiracy "for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws."

5. 42 USCS 1986 provides:

> That every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in 42 USCS section 1985 are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, are liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, where such person by reasonable diligence could have prevented the act.

QUESTIONS PRESENTED

1. Whether the district court erred in refusing legal representation for the plaintiff and by denying him of his claim under Title 42 USCS Section 1985 would deprive him of his constitutional right to be free from *conspiracies.*
2. Whether Local Rule 3(c) for the district of Oregon that prohibits *out-of-state attorney* from participating in this Court, deprives the plaintiff of his constitutional right to equal protection of the laws; due process of law; and equal privileges and immunities under the law since, the plaintiff was deprived of legal representation in Oregon.

STATEMENT OF THE CASE

This action arises under Title 42 USCS section 1985 and section 1986 of the Felderal Civil Rights Act because, the appellant in the above-mentioned case was maliciously, and wilfully discriminated against because of his race and

ethnic origin. He was unlawfully deprived of his constitutional rights through corrupt and wilful "conspiracy" among the appellees Oregon State Employees Association, State of Oregon officials and their agents.

The appellant, VICTORIO C. RIVERA, who is a Filipino minority, is not a lawyer but a college graduate with a bachelor's degree in Fine Arts from the University of the Philippines, winner of many awards in painting and sculptures both in the Philippines and in the United States; and has contributed to the community through his talent in the form of painting demonstrations to groups of artists and civic organizations, etc.

The appellant is 54 years of age, and is a naturalized citizen of the United States of America. He was hired as a graphic artist 2 by the State of Oregon for the State Accident Insurance Fund in 1965. After 12 years of excellent service records, he was unlawfully and maliciously dismissed from his state job, on December 2, 1977, by the officials of the State of Oregon and their agents. These said officials and their agents knowingly, discriminately, fraudulently, maliciously and wilfully fabricated 31 charges against the appellant to constitute alleged "insubordination, inefficiency, misconduct, incompetence and other unfitness to render effective service" to suspend and to dismiss the appellant on the alleged charges.

The appellant is innocent of all the 31 charges against him. *Not one* of the 31 charges was ever proven to be true by the appellees; yet, the appellant was deprived of returning to his job with the State of Oregon. Also, he was

black-listed from employment, deprived of unemployment benefits, deprived of his constitutional rights to Employment Division Law, ORS 657.471 Manual of Charging Benefits to Employer, and quote:

> "(9) If the administrator finds that an employer or any employe, officer, or agent of an employer, in submitting facts pursuant to subsection (7) or (8) of this section *wilfully makes a false statement or representation or wilfully fails to report a material fact concerning the termination of an individual's employment,* the administration shall make a determination thereon charging the employer's reserve account not less than two nor more than 10 times the weekly benefit amount of the claimant or the claimants as the case may be . . . "

This was the Administrative Decision of the Employment Division served to the appellant on December 30, 1977, and quote:

> "CONCLUSION AND REASONS: You were discharged but not for misconduct in connection with your work. The information on hand does not clearly show that your actions were a wilful disregard of directives issued by the employer. Consideration given to your length of service, merit ratings before and after your last supervisor, it appears that the events, leading up to your dismissal could be considered to be poor judgment which is not misconduct."

As a result of this Administrative Decision, the appellant's employer appealed the decision. However, Appeal Referee C. Woods wilfully *conspired* with the appellee State Accident Insurance Fund against the appellant and unlawfully, fradulently, discriminately and maliciously ordered the *destruction* of the tape recording of the hearing after the appellant's employer could not prove a *single* charge from a total of *31 charges* against the appellant. This tape recording was a hearing of Case No. 78-S-127-NP Rivera v. State Accident Insurance Fund. Furthermore, the Appeal Referee unlawfully substituted his findings of the hearing with a different version, to show on the record that there was no hearing held on February 9, 1978 and quote:

> "FINDINGS OF FACT: On February 9, 1978, the appellant* filed with the Division a request to withdraw the request for hearing filed on the above-stated date.
>
> CONCLUSION: The appellant's request to withdraw the request for hearing is granted.
>
> DECISION: The request for hearing filed by the appellant* on January 3, 1978 is dismissed in accord with the request. The Administration Decision served December 30, 1977 remains in effect."
>
> **State Accident Insurance Fund.*

As a result of this wilful discrimination and corrupted conspiracy against the appellant, he was deprived of his constitutional right to legal representation by the officials of the Oregon State Employees Association (OSEA). *This*

is a violation of its obligation under its collective bargaining agreement.

The appellant was also deprived of his constitutional rights by the Oregon Attorney General, the Governor of Oregon, officials of the Oregon Affirmative Action, Salem Legal Aids, Equal Employment Opportunity Commission, Oregon American Civil Liberties Union, Civil Rights of the Bureau of Labor, and by more than 50 practicing attorneys in Oregon. This is a wilful and deliberate violation of the appellant's constitutional rights as a result, of the wilful and deliberate conspiracy among the appellees and their agents.

As a matter of right, the appellant was forced to represent himself against the establishment despite the fact that the appellant is not a lawyer nor has the experience in legal procedures.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Judges and court officials of the United States District Court for the District of Oregon have allowed themselves to be corrupted to wilfully "conspire" with appellees Oregon State Employees Association, State of Oregon officials and their agents to discriminate against the appellant; thus depriving him of his constitutional rights to a fair trial in this Court by obstructing justice and harassments by the following tactics:*

I. Deprived appellant of the Right to be free from conspiracies;
II. Deprived appellant of equal representation;
III. Deprived appellant of equal protection of the laws;

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*See Appendix A, B, C, D, E, F, G, H, I, J, K, L, M

IV. Deprived appellant of due process of law;

V. Manipulated and fabricated fradulent statements set forth in the Orders, Civil Minutes and Correspondences;

VI. Deliberately ignored all of appellant's evidences, affidavits, laws and rules, and memorandum of points and authorities.

VII. Leading the appellant with malicious intent to default by holding back three (3) Court Orders for a period of thirty (30) to forty (40) days, after entry of the date, before mailing copies of the said orders to the appellant.

VIII. Leading the appellant, with malicious intent to default by issuing two (2) differnet dates of an alleged hearing and by manipulating those two (2) dates several times up until the final hour.

IX. Leading the appellant with malicious intent to default by giving wrong information;

X. Deprived appellant of equal privileges and immunities under the laws.

CONCLUSION

The questions presented in this statement are substantial. The appellant respectfully urges this Court to: (1) strike the Orders of the District Court as sham and false, on the grounds that judges and court officials have allowed themselves to be corrupted by the appellees and their agents, and wilfully "conspired" with them to deprive the appellant of his constitutional rights to a fair trial and equal protection of the laws, equal privileges and immunities of the laws and; (2) to note probable jurisdiction and set the case down for argument.

Respectfully submitted,

VICTORIO C. RIVERA, artist
Appellant, deprived of legal representation,
is representing himself.
4926 Pullman Ave. S.E.
Salem, Oregon 97302
(503) 581-4649

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,
Plaintiff,

v.

STATE OF OREGON, STATE ACCIDENT INSURANCE FUND; STATE PERSONNEL DIVISION; STATE EMPLOYMENT DIVISION; EMPLOYMENT RELATIONS BOARD; CIVIL RIGHTS OF THE BUREAU OF LABOR and OREGON STATE EMPLOYEES ASSOCIATION,
Defendants.

Civil No. 79-559
ORDER

IT IS HEREBY ORDERED that plaintiff's motion entitled "Demand for Judgment", filed March 14, 1980, is denied.

Dated this 10th day of April, 1980.

Owen M. Panner
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,

Plaintiff,

v.

STATE OF OREGON, STATE ACCIDENT INSURANCE FUND; STATE PERSONNEL DIVISION; STATE EMPLOYMENT DIVISION; EMPLOYMENT RELATIONS BOARD; CIVIL RIGHTS OF THE BUREAU OF LABOR and OREGON STATE EMPLOYEES ASSOCIATION,

Defendants.

Civil No. 79-559
ORDER

After review of the record and file in the above-entitled matter, the recommendation of the Magistrate issued the 26th day of February, 1980, is approved.

IT IS HEREBY ORDERED that plaintiff's motion for 2nd summary judgment against defendants' answer to plaintiff's 1st amended complaint, is denied.

Dated this 9th day of April, 1980.

OWEN M. PANNER
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Civil Minutes — General

Case No. 79-559 Date: April 9, 1980

Title: VICTORIO C. RIVERA v. STATE OF OREGON, et al.

DOCKET ENTRY: Record of order setting for pretrial conference before Judge Panner Monday, April 28, 1980 at 3:00 PM. Ordered that all parties are directed to submit a proposed form of pretrial order by Thursday, April 24 (if Mr. Rivera needs assistance, it will be provided at the time of the pretrial conference.) - PA*

PRESENT: Hon. Owen M. Panner, Judge; M. Hui, Deputy Clerk.

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*Local Rule 19 Pretrial Conferences and Orders, "Our new rule on pretrial contemplates more time between the call and the filing of the pretrial order. Except when the parties request a shorter period, the calendar judge will set the pretrial *at least two months*, and *often three months*, after the call." The appellant was just given 13 days to submit pretrial order instead of the usual time of three months.

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON 97205

May 2, 1980

Mr. Victorio C. Rivera
4926 Pullman Avenue S.E.
Salem, OR 97302

Dear Mr. Rivera:

Rivera v. State of Oregon - Civil #79-559

I have received your Motion and Demand for Jury Trial, which you filed on April 21, 1980. I have also received your Notice of Appeal to the Supreme Court of the United States.

Your appeal is not valid. Therefore, this Court will retain jurisdiction over your case. Section 1252 of Title 28 authorizes direct appeals to the Supreme Court only when this Court has held that an Act of Congress is unconstitutional and the United States is a named party to the action. Additionally, Section 1291 of Title 28 provides that the courts of appeal have jurisdiction only over *final* decisions of the district courts. A denial of a summary judgment motion or a demand for judgment does not constitute a final order for purposes of the appeal because it does not finally dispose of the action.

A Pre-Trial Conference in this action has been set for Monday, June 2, 1980, at 10:00 a.m. At that time we will discuss the Pre-Trial Order.

A trial before a jury has been scheduled for the week of August 18, 1980. At the Pre-Trial Conference, on June 2, you will be asked to estimate the length of the trial, for the names of your witnesses and for a summary of your witnesses' testimony. This summary can be either in writing or oral. I will ask you to present any exhibits you expect to use. If you have any questions you wish me to ask the prospective jurors or any instructions you wish me to give to the jury, would you please have them ready at the time of the Pre-Trial Conference.

Sincerely,

OWEN M. PANNER

APPENDIX E

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND, OREGON 97205

April 10, 1980

Mr. Victorio C. Rivera
4926 Pullman Avenue, S.E.
Salem, Oregon 97302

Dear Mr. Rivera:

Re: Rivera v. State of Oregon, et al;
Civil No. 79-559

I am writing in response to your letter received in this office, dated April 7, 1980. I will attempt to answer your questions in the order in which they were presented:

1. Reference by the state defendants pertaining to two separate orders denying motions for summary judgment appears to have been in error. However, the order filed by the Honorable Owen M. Panner on April 9, 1980, corrects that. This order, a copy of which is included for your information, represents what appears to be the second denial of your motion for summary judgment.
2. There was no date scheduled for an oral argument hearing on your motion for summary judgment. Rule 11(f) requires that "A movant who desires to be heard

shall endorse the request on the face of the motion." Without such a request, oral argument is waived.*

3. Local Rule 11 provides that all motions shall be placed on the regular motion calendar on the fourth Monday after the motion is filed. No notice to parties is given beyond that provided for in the Local Rules of Court.
4. As noted in the order enclosed with this letter, Judge Panner has already ruled upon your second motion for summary judgment.

I direct your attention now specifically to the minute order dated April 9, 1980. This order establishes a date for pre-trial conference of April 28, 1980, at 3:00 p.m. You are directed to submit a proposed form of pre-trial order by Thursday, April 24. This order must be submitted to the Clerk's Office before the close of business of that day. You should make your best efforts to prepare that order, however, as Judge Panner noted in his minute order, he will provide you assistance at the time of the pre-trial conference if necessary.

Very truly yours,

DONALD M. CINNAMOND
Chief Deputy

---

*Defendants/appellees have already requested for an oral argument on the motion for Summary Judgment, therefore, plaintiff/appellant does not have to make the same request.

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,
Plaintiff,

v.

STATE OF OREGON, STATE ACCIDENT INSURANCE FUND; STATE PERSONNEL DIVISION; STATE EMPLOYMENT DIVISION; EMPLOYMENT RELATIONS BOARD; CIVIL RIGHTS OF THE BUREAU OF LABOR and OREGON STATE EMPLOYEES ASSOCIATION,
Defendants.

Civil No. 79-559
ORDER

This action is presently before the court on plaintiff's motion entitled "PLAINTIFF'S MOTION FOR 2nd SUMMARY JUDGMENT AGAINST DEFENDANTS' ANSWER TO PLAINTIFF'S 1st AMENDED COMPLAINT." For the reasons stated below, I conclude that this motion should be denied.

On December 20, 1979, this Court denied a similar motion for summary judgment presented by plaintiff. On January 9, 1980, this Court denied plaintiff's motion for reconsideration of the order issued on December 20, 1979. On February 13, 1980, this Court denied plaintiff's motion

to declare the orders issued on December 20, 1979 and January 9, 1980 null and void. The original motion for summary judgment was denied on the grounds that genuine issues of material fact existed. Plaintiff has not submitted affidavits or exhibits which might change this conclusion; nor has plaintiff attemped to explain in argument why genuine issues of fact allegedly no longer exist.*

Even if plaintiff's motion is treated as a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), it still should be denied. Defendant's answer presents legally sufficient defenses.

Dated this 26th day of February, 1980.**

EDWARD LEAVY
United States Magistrate

---

*All defendants/appellees failed to answer, failed to submit affidavits to prove that there is a genuine issue of material fact for trail nor give any meritorious excuse for not complying to the Local and Federal Rules of Civil Procedure.

**This order was held back for forty (40) days after entry of date, before a copy was mailed to the appellant.

APPENDIX G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,
Plaintiff,

v.

STATE OF OREGON, STATE ACCIDENT INSURANCE FUND; STATE PERSONNEL DIVISION; STATE EMPLOYMENT DIVISION; EMPLOYMENT RELATIONS BOARD; CIVIL RIGHTS OF THE BUREAU OF LABOR and OREGON STATE EMPLOYEES ASSOCIATION,
Defendants.

Civil No. 79-559
ORDER

This civil rights action is presently before the court on plaintiff's motion to declare certain orders null and void.

Plaintiff contends that orders dated December 10, 1979 and January 9, 1980 issued by Judge James M. Fitzgerald are null and void due to Judge Fitzgerald's alleged lack of authority to rule on matters in this district. The record indicates that plaintiff's allegation is without merit. The attached exhibit establishes that Judge Fitzgerald was properly designated and assigned, pursuant to 28 U.S.C. § 292(b), to hold district court in the District of Oregon by the Chief Judge of the Ninth Circuit, James Browning. The assignment was for "the period beginning December 10,

1979, and ending December 21, 1979, and for such additional time in advance thereof to prepare for the trial of cases *or thereafter as may be required to complete unfinished business.*" (emphasis added.) The complained of orders, dated December 10, 1979 and January 9, 1980, are both within the designated time period.*

Based on the above, I conclude that Judge Fitzgerald acted with lawful authority; therefore, plaintiff's motion is DENIED.

Dated this 13th day of February, 1980.**

U. A. BOOTH
United States District Judge

---

*Fabrication of lies. The true facts are given on the appellant's motions filed with the lower court dated January 23, 1980 and January 17, 1980.
**This order was held back for forty (40) days after entry of date, before a copy was mailed to the appellant.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,
Plaintiff,

v.

STATE OF OREGON, STATE ACCIDENT INSURANCE FUND; STATE PERSONNEL DIVISION; STATE EMPLOYMENT DIVISION; EMPLOYMENT RELATIONS BOARD; CIVIL RIGHTS OF THE BUREAU OF LABOR and OREGON STATE EMPLOYEES ASSOCIATION,
Defendants.

Civil No. 79-559
ORDER

On December 20, 1979, I entered an order denying plaintiff's motion for summary judgment. Plaintiff has now filed "objections" to that order. The "objections" will be treated as a motion for reconsideration.

Plaintiff apparently complains that the motion for summary judgment should not have been considered because defendant Oregon State Employees Association had not answered the motion for summary judgment. However, by prior order that defendant was dismissed from this case. The remaining defendants responded to the summary judgment motion. I note as well that plaintiff now objects that the motion was decided too quickly after

initially insisting in his letter of December 18, 1979 that the motion be decided prior to the conclusion of my assignment in the District of Oregon.*

Plaintiff finally objects that the December 17, 1979 hearing on related motions was but a "mock hearing." The December 17, 1979 hearing was held after plaintiff failed to attend a previously scheduled hearing due to some confusion over notice. Plaintiff was given a full opportunity to express himself but indicated he had nothing further to add to the papers he had already submitted.

Accordingly, plaintiff's motion for reconsideration is, in all respects, denied.

ORDERED ACCORDINGLY.

Dated this 9th day of January, 1980.

JAMES M. FITZGERALD
United States District Judge

---

*Appellee Oregon State Employees Association was unlawfully dismissed from the case without the knowledge of the appellant, without any hearing and without any trial after appellee failed to answer the appellant's motion for summary judgment. Appellant challenges the lower court to produce the recording made of the hearing held on December 17, 1979; to prove if there was really a genuine hearing held within the five (5) minutes stay in the courtroom.

APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,

Plaintiff,

v. NO. Civil 79-559

Defendants. ORDER

I have reviewed plaintiff's motion for summary judgment and defandants ' response thereto. Plaintiff's motion for summary judgment is denied. There are material facts in dispute and therefore the case is inappropriate for resolution on plaintiff's summary judgment motion.

SO ORDERED.

Dated at Portland, Oregon, this 20th day of December, 1979.

JAMES F. FITZGERALD
United States District Judge

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,

Plaintiff,

v. CIVIL NO. 79-559

STATE OF OREGON, et al., ORDER

Defendants.

Pursuant to the order of this court, a hearing was held December 17, 1979 to consider the following motions:

1. Defendant's motion to dismiss the amended complaint.

2. Plaintiff's motion for a new hearing on denial of court appointed attorney.

3. State defendant's motion to strike plaintiff's amended complaint.

4. Plaintiff's motion to allow amendment.

After argument the matter was ordered submitted. Based upon my review of all the papers submitted, it is ordered that:

1. The motion of defendant Oregon State Employees Association to dismiss the amended complaint as to that defendant is granted.

2. Plaintiff's motion for a new hearing on the denial of a court appointed attorney is denied. Plaintiff has failed to make a sufficient showing as to the merits of his claim. *See*

Caston v. Sears Roebuck & Co., 556 F.2d 1305 (5th Cir. 1977).

3. The motion of the state defendants for an order striking from plaintiff's amended complaint a claim for punitive damages is granted. Such damages are not recoverable under Title VII of the Civil Rights Act of 1964.

4. Plaintiff's motion to allow amendment to conform to the evidence is denied without prejudice. Plaintiff may resubmit this motion upon showing, with particularity, the need for and extent of such amendment.

ORDERED ACCORDINGLY.*

Dated at Portland, Oregon this 18th day of December, 1979.

JAMES M. FITZGERALD
United States District Judge

---

*Fabrication of lies. There was never a hearing of *any* of the four motions mentioned above. This order was held back for thirty (30) days after entry of the date, before a copy was mailed to the appellant.

APPENDIX K

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,
Plaintiff,
v.
STATE OF OREGON, et al.,
Defendants.

Civil No. 79-559
ORDER

This is a case in which plaintiff appears on his own behalf. The file is replete with a variety of motions which reflect, among other things, the fact that plaintiff represents himself. In addition to the documents in the official Clerk's file there have been a number of letters addressed to judges and others, in all, or nearly all of which, plaintiff has expressed severe criticism of one or more of the judges and other court officials. For example, before Chief Judge Skopil was elevated to the Court of Appeals on October 20, 1979, Mr. Rivera sent a letter to him containing utterly outrageous charges against me and others. After Judge Skopil became a judge of the Court of Appeals, Mr. Rivera wrote to me saying equally outrageous things about Judge Skopil.

Under such circumstances I would refuse to act in any way whatsoever. Under the "Rule of Necessity," and as Chief Judge of this Court, I must at least act sufficiently so as to assign this case to an outside judge. Judge Fitzgerald from the District of Alaska will be sitting here by designation starting December 10 for a period of two weeks. I have acted in my capacity as Chief Judge and under the Rule of Necessity in assigning the case to him. All

matters presently pending will be heard by Judge Fitzgerald on the 17 day of December, 1979, at 9:00 o'clock A.M., or at such other time as he designates.

In the meantime, Defendant Oregon State Employees Association has moved for an order allowing an extension of time within which that defendant may file appropriate responses to the plaintiff's outstanding motion for summary judgment. The extension requested is for a period of 60 days after Judge Fitzgerald rules on that defendant's motion to dismiss. The extension is granted for good cause shown, based upon the fact that orderly presentation of the various matters requires that Defendant Association be allowed an added period of time of not more than 60 days within which to be heard further in connection with the summary judgment motion.*

Judge Fitzgerald, of course, will be entitled to amend or alter this order in such fashion as he sees fit, and I act solely under the Rule of Necessity in view of the fact that a motion for summary judgment has been filed by the plaintiff on the 2nd day of November, 1979. All other matters are to be heard and decided by Judge Fitzgerald.

It is so ORDERED.

DATED this 4th day of December, 1979.

JAMES M. BURNS
Chief U.S. District Judge

---

*Appellee Oregon State Employees Association was unlawfully dismissed from the case after failing to comply to Local and Federal Rule of Civil Procedure.

APPENDIX L

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
Civil Minutes — General

Case No. 79-599 Date: 6/29/79

Title: Rivera v. State of Oregon, et al

DOCKET ENTRY: Record of hearing. ORDER: Plaintiff's motion (12) to file amended complaint ALLOWED. Amended complaint filed.

ORDER; Defts' motions, document numbers 10, 13, 14, 15, 16, 17 STRICKEN from motion calendar 7/16/79 as moot by reason of filing of amended complaint. (See list below.)

ORDER: Plaintiff's motions (11 and 18) for appointment of attorney DENIED.

PRESENT: Hon. Edward Leavy, Judge; Adell Johnson, Deputy Clerk; Attorney present of plaintiff, Victorio C. Rivera, Pro per; Attorney present for defendants: William R. Canessa.

PROCEEDINGS:

Motions mooted: Or. St. Employees Assoc.; Motion (10) to dismiss.

Personnel Division's Motion (13) to dismiss and/or for summary judgment.

State of Oregon and SAIF's motion to dismiss and/or for summary judgment.

State Employment Division's Motion (15) to dismiss and/or for summary judgment.

Employment Relation Board's Motion (16) to dismiss and/or for summary judgment (16)

Civil Rights Division Motion (17) to dismiss and/or for summary judgment.

Remaining on Motion Calendar 7/16/79; 1:30 before J. Juba: Oregon State Employees Association's Motion to Dismiss Amended Complaint (17a).

APPENDIX M

UNITED STATES DEPARTMENT OF JUSTICE
Washington D.C. 20530

NOTICE OF RIGHT TO SUE
WITHIN 90 DAYS

May 16, 1979

CERTIFIED MAIL

Mr. Victorio C. Rivera
4926 Pullman Avenue, SE
Salem, Oregon 97302

Re: EEOC Charge Against State Accident
Insurance Fund
No. 101780207

Dear Mr. Rivera:

Because you filed the charge against the respondent named above with the Equal Employment Opportunity Commission, and the Commission has dismissed that charge, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, *et seq.*, against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate United States District Court within 90 days of your receipt of this Notice. If you are unable to retain an attorney, the Court is authorized in its discretion to appoint an attorney to represent you and to authorize commencement of the suit without payment of

fees, costs, or security. In order to apply for an appointed attorney, you may take this Notice, along with any correspondence you have received from the Justice Department or the Equal Employment Opportunity Commission, to the Clerk of the United States District Court in Portland.

Your attorney may inspect the investigative file pertaining to your case at a time and place convenient to the parties. That file is located in the EEOC District Office, 710 Second Avenue, Dexter Horton Building, Seattle, Washington 98104.

We request that you send this Department a copy of any complaint initiating suit.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

By:

Herbert A. Goldsmith, Jr.
Attorney
Federal Enforcement Section

APPENDIX N

VICTORIO C. RIVERA
4926 Pullman Ave. SE
Salem, Oregon 97302
Telephone: (503) 581-4649

Plaintiff, deprived of legal representation, is representing himself.

IN THE UNTIED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

VICTORIO C. RIVERA,
Plaintiff,

v. CIVIL NO. 79-559

OREGON STATE EM—PLOYEES ASSOCIATION, STATE OF OREGON, et al,
Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that VICTORIO C. RIVERA, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the unlawful and corrupted Orders issued by the Honorable Judge Owen M. Panner of the United States District Court for the District of Oregon; in his two court decisions against the plaintiff based on

Title VII of the Civil Rights Act of 1964 as *unconstitutional as applied* to facts of the above-mentioned case.

Also, the plaintiff challenges the constitutionality of the Act of Congress on Local Rule 3(c) of the United States District Court for the District of Oregon as applied in the above-mentioned case.

The following unlawful and corrupted decisions against the plaintiff are:

1. ORDER, ENTERED IN THIS ACTION ON APRIL 10, 1980. This is a denial of the plaintiff's motion "Demand for Judgment" filed on March 14, 1980, after all requirements to Title 42 USCS section 1985(2)(3) of the Federal Civil Rights Act; Rule 8(a)(3), Rule 54(c), Rule 55(a)(b), and Rule 56(c)(e) of the Federal Rules of Civil Procedure; and Local Rule 11(d) of the U.S. District Court for the District of Oregon were all satisfied.

2. ORDER, ENTERED IN THIS ACTION ON APRIL 9, 1980. This is a denial of the plaintiff's motion for "Second Summary Judgment" filed on January 30, 1980 after all the requirements to Title 42 USCS section 1985(2)(3) of the Federal Civil Rights Act; Rule 56(a)(c)(e) of the Federal Rules of Civil Procedure and the Local Rule 11(d) of U.S. District Court for the District of Oregon were all satisfied.

THIS APPEAL IS TAKEN PURSUANT TO TITLE 28 USCS *SECTION 1252* AND *SECTION 2403* OF THE FEDERAL CIVIL RIGHTS ACT.

Respectfully submitted,

VICTORIO C. RIVERA
Plaintiff, deprived of legal representation, is representing himself.

I, VICTORIO C. RIVERA, plaintiff in this action, hereby swear that the above-mentioned allegations are true to the best of my knowledge.

VICTORIO C. RIVERA
Plaintiff, deprived of legal representation, is representing himself.

Subscribed and sworn before me this 29th day of April, 1980.

PATRICIA E. BLEVINS
Notary Public of Oregon

My commission expires 8/24/81.

APPENDIX O

PROOF OF SERVICE

I, VICTORIO C. RIVERA, deprived of legal representation is representing himself as appellant herein, depose and say that on the 29th day of April, 1980, I served a total of nine (9) COPIES of the foregoing "Notice of Appeal to the Supreme Court of the United States" on the several parties thereto, as follows:

1. On the United States, by mailing three (3) copies in a duly three (3) separate addressed envelopes, with air mail postages prepaid, to The Solicitor General, Department of Justice, Washington, D.C. 20530.
2. On Oregon State Employees Association and the State of Oregon, et al, intervening defendants, by mailing three (3) copies for each defendant in duly marked three (3) separate sealed envelopes, with first class postages prepaid, to their respective attorneys of record, as follows:

   a. WILLIAM R. CANESSA
   Asst. Atty. General
   500 Pacific Building
   520 SE Yamhill St.

   Attorney for the State of Oregon, et al

   b. DAVID W. AXELORD, others
   Attorneys at Law
   1200 Standard Plaza
   Portland, Oregon 97204

   Attorneys for the Oregon State Employees Association

ALL PARTIES REQUIRED TO BE SERVED HAVE BEEN SERVED.

VICTORIO C. RIVERA
Appellant, deprived of legal representation, is representing himself.

Subscribed and sworn to before me at Salem, OR this 29th day of April, 1980.

PATRICIA E. BLEVINS
Notary Public of Oregon

My commission expire 8/24/81.

Supreme Court, U.S.
FILED
OCT 20 1980
MICHAEL RODAK, JR., CLERK

No. 79-1889

IN THE SUPREME COURT OF THE UNITED STATES
October Term 1980

VICTORIO C. RIVERA,
Petitioner,

versus

OREGON STATE EMPLOYEES ASSOCIATION
Morton H. Shapiro, John Irvin, Peter DeLuca,

STATE OF OREGON
Robert Straub, Victor Atiyeh, James A. Redden, William Hoelsher, Harold Williams, Carol Whitney

STATE ACCIDENT INSURANCE FUND,
Charles Gill, Jr., Hank McCauley, Deryl Currie, Jim Randall, Jean Rover, Catherine Sanford, O. K. Nielsen

STATE PERSONNEL DIVISION,
William G. Hughes, Ranney H. Reinen, Betty Spelbrink

STATE EMPLOYMENT DIVISION,
Raymond P. Thorne, C. Woods, R. Ritchie, L. Propeck, Dean Barr, W. H. Brinegar, Colette Buhr, John Loike, Barbara Johnson

EMPLOYMENT RELATIONS BOARD,
Melvin Cleveland, A. H. Blogg, Peter C. Courtney

CIVIL RIGHTS OF BUREAU OF LABOR,
Bill Stevenson, Maria Baragli, Frances Runkel, Reina Smith,
Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PETITION FOR REHEARING

VICTORIO C. RIVERA, petitioner
Deprived of legal representation,
is representing himself.

4926 Pullman Ave. SE
Salem, Oregon 97302
(503) 581-4649

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No. 79-1889

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VICTORIO C. RIVERA, petitioner,

v.

OREGON STATE EMPLOYEES ASSOCIATION

and the

STATE OF OREGON, ET AL

On Appeal from the United States District Court for the District of Oregon

---

PETITION FOR REHEARING

Pursuant to Rule 51 of the Rules of the Supreme Court of the United States, petitioner, of racial minority, deprived of his constitutional rights to due process of law and equal protection of the law, herein respectfully moves this Court for an order

(1) vacating its denial to a "Direct Appeal" from decisions invalidating Acts of Congress, entered on October 6, 1980, and (2) granting the petition. As grounds for this motion, petitioner states the following:

I.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DISREGARD PROCEDURAL REUIREMENTS TO JURISDICTION ON DIRECT APPEALS.

"Any party may appeal to the Supreme Court from * * * decree or order of any court of the United States, * * * holding an Act of Congress unconstitutional in any civil action, suit, or proceeding to which the United States or any of its agencies, or any officer or employee thereof, as such officer or employee, is a party". Title 28 USCS 1252.

Also, "in any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, where-

in the constitutionality of any Act of Congress affecting the public interest is drawn in question, * * *."Title 28 USCS 2403.

1. Petitioner had submitted a timely "Notice of Appeal to the Supreme Court of the United States" dated April 29,1980, and filed with the U.S. District Court for the District of Oregon on April 30, 1980, pursuant to Rule 10 of the Supreme Court.
2. Petitioner had submitted a timely 40 copies of the Jurisdictional Statement, had paid the docket fee, and had filed with proof of services to all appellees as prescribed by Rule 28, and had complied in all respects with Rule 15 of the Supreme Court. Also, the Jurisdictional Statement satisfied all requirements as provided in Rule 12 and Rule 33 of the Supreme Court of the United States.

3. Appellees Oregon State Employees Association and the State of Oregon, et al, had failed to respond to petitioner's Jurisdictional Statement and had failed to file a motion to dismiss the appeal on the ground that the appeal was not within this Court's jurisdiction, or because it was not taken in conformity with Statute or with the Rules of the Supreme Court.

II.

TO DISMISS PETITIONER'S DIRECT APPEAL IS UNCONSTITUTIONAL.

"Sect. 1 * * * No State shall make or enforce any law which shall abridge the priviledges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." XIV Amendment to the United States Constitution.

1. Petitioner called by long distance the clerk of the Supreme Court on Wednesday, October 8, 1980, at 9 AM, Pacific Time, to inquire the status of Civil No. 79-1889. The clerk told petitioner that on Monday, October 6, 1980, the Court had decided to dismiss the petitioner's direct appeal, as well as "alleged" writ of certiorari to the case. Furthermore, the clerk told petitioner and quote,

> "The Court did not want to hear anything about your case."

2. Petitioner received the official order from the clerk on October 10, 1980, dismissing the direct appeal for want of jurisdiction.

3. "Supreme Court, being without direct-appeal jurisdiction, will vacate District Court's order and remand case to District Court so that fresh order may be entered and timely appeal prosecuted to Court of Appeals." Gonzales v. Automatic Employees Credit Union (1974), 419 US 90, 42 L Ed 2d 249, 95 S Ct 289.

III.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DEPRIVE HIM OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF THE LAW.

"Where jurisdiction of district court was invoked upon constitutional grounds, Supreme Court, upon appeal from order denying pre-

liminary injunction, had jurisdiction to review whole case." Van Dyke v. Geary (1917) 244 US 39, 61 L Ed 973, 37 S Ct 483.

IV.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DEPRIVE HIM OF HIS CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF THE LAWS.

"Federal District Court's decision is reviewable by United States Supreme Court on appeal, 28 USCS Section 1252, where basis of District Court's decision is that Act of Congress is unconstitutional, regardless of what contentions of parties might be as to what proper basis of decision should have been." United States v. Raines (1960) 362 US 17, 4L Ed 2d 524, 80 S Ct. 519.

V.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO DESTROY THE VERY FOUNDATION OF A DEMOCRATIC SOCIETY.

"Jurisdiction of Supreme Court on appeal extended to every question involved, whether state or federal." Sterling v. Constantin (1932) 287 US 378, 77 L Ed 375, 53 S Ct 190.

VI.

TO DISMISS PETITIONER'S DIRECT APPEAL IS A WILFUL CONSPIRACY WITH THE LOWER COURT TO DISCRIMINATE AGAINST AND INJURE THE PETITIONER.

"Although government's jurisdictional statement raised no question reviewable by Supreme Court on direct appeal from District Court's ruling dismissing indictment, nevertheless, where indictment is valid, appeal will not be dismissed, but ruling will be set aside and case remanded for trial." United States v. Fruehauf (1961) 365 US 146, 5 L Ed 2d 864, 81 S Ct 899.

VII.

TO DISMISS PETITIONER'S DIRECT APPEAL IS GIVING-IN TO THE WISHES OF CORRUPT OFFICIALS IN THE GOVERNMENT TO OBSTRUCT JUSTICE.

"Supreme Court of United States may reverse finding of fact in action tried without intervention of jury, where, although there is evidence to support finding, reviewing courts, on entire evidence, is left with definite and firm conviction that mistake has been committed." United States v. United States Gypsum Co. (1948) 333 US 364, 92 L Ed 746, 68 S Ct 525, reh den 333 US 869, 92 L Ed 1147, 68 S Ct 788.

VIII.

TO DISMISS PETITIONER'S DIRECT APPEAL IS INCOMPETENCY OF JUDGES WITHIN THE SUPREME COURT OF THE UNITED STATES.

"In case of direct appeal, reviewing court takes action appropriate in interest of justice, even though problem would not rise to constitutional dimensions neces-

sary to undo final judgment on collateral attack." Scott v. United States (1970) 138 App DC 339, 427 F2d 609.

IX.

TO DISMISS PETITIONER'S DIRECT APPEAL IS IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES OF JUDGES IN THE SUPREME COURT OF THE UNITED STATES.

"Purpose of 28 USCS Section 1252, allowing direct appeals to Supreme Court from certain decisions of District Court, is to provide prompt review of constitutionality of federal acts." Reid v. Covert (1956) 351 US 487, 100 L Ed 1352, 76 S Ct 880, different results reached on reh on other grounds 354 US 1, 1 L Ed 2d 1148, 77 S Ct 1222.

X.

TO DISMISS PETITIONER'S DIRECT APPEAL IS TO PREVENT PETITIONER FROM EXERCISING HIS CONSTITUTIONAL RIGHTS WITHIN THE LAW.

"As judges of this court, we find ourselves in much the same position as the judges in Evans v. Gore, supra. We regret that it falls our lot to decide these cases, and we would much prefer that a resolution of the controversy not be our responsibility. Nevertheless we realize that the plaintiffs are entitled to have their cases heard and decided by a court of the United States, and under the law there is no other court to which they could go. Should we refuse to hear and decide their cases, the doors of the courts would be closed to them. This could amount to a denial of due process under the 14th amendment to the Constitution. See Boddie v. Connecticut, 401 US 371, 91 S Ct. 780, 28 L Ed 2d 113 (1971). It is a fundamental principle of

our jurisprudence that access to the courts to secure and establish important rights should be made available to all citizens at all times. This is particularly true where the complaining parties are asserting claims under the Constitution, as in the instant cases." Atkins v. United States 556 F. 2d 1028 (1977)

C O N C L U S I O N

For the reasons set forth above and the fact that the above-mentioned case was never scheduled for trial nor was there a hearing before the lower court, as well as those contained in the petition to direct appeal, petitioner prays that this Court

grant rehearing of the order of dismissal, vacate that order, grant the petition and review the judgment and opinion below.

Dated this 14th day of October, 1980.

Respectfully submitted,

Victorio C. Rivera

VICTORIO C. RIVERA, petitioner
Deprived of legal representation,
is representing himself.

AFFIDAVIT OF CERTIFICATION

I, VICTORIO C. RIVERA, petitioner in this action, hereby swear that the above-mentioned allegations are true to the best of my knowledge. Also, I hereby swear that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 51(1) of the Rules of the Supreme Court of the United States.

Victorio C. Rivera

VICTORIO C. RIVERA, petitioner
Deprived of legal representation,
is representing himself.

Subscribed and sworn before me this 14th day of October, 1980.

[illegible]

NOTARY PUBLIC OF OREGON

My commission expire 8-24-81

AFFIDAVIT OF SERVICE

I, VICTORIO C. RIVERA, deprived of legal representation, is representing himself as petitioner herein, depose and say that on the ____ day of October, 1980, I served a total of 9 copies of the foregoing "Petition for Rehearing" on the several parties thereto, as follows:

1. On the United States, by mailing 3 copies in a duly 3 separate addressed envelopes, with air mail postages prepaid, to The Solicitor General, Department of Justice, Washington, D.C. 20530.
2. On Oregon State Employees Association and the State of Oregon, et al, intervening defendants, by mailing 3 copies for each defendant in duly marked three separate sealed envelopes, with first class postages prepaid, to their res-

pective attorneys of record, as follows:

a. WILLIAM R. CANESSA
Asst. Atty. General
500 Pacific Building
520 SE Yamhill St.
Portland, Oregon 97204

Attorney for the State of Oregon

b. DAVID W. AXELROD, OTHERS
Attorneys at law
1200 Standard Plaza
Portland, Oregon 97204

Attorneys for the Oregon State Employees Association

ALL PARTIES REQUIRED TO BE SERVED HAVE BEEN SERVED.

_____

VICTORIO C. RIVERA, petitioner
Deprived of legal representation, is representing himself.

4926 Pullman Ave. SE
Salem, Oregon 97302
(503) 581-4649

Subscribed and sworn before me this ___ day of October, 1980.

_____

NOTARY PUBLIC OF OREGON

My commission expire _____